

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

<b>Complaint no.</b>	:	<b>1261 of 2022</b>
<b>First date of hearing:</b>		<b>28.07.2022</b>
<b>Date of decision:</b>		<b>05.09.2024</b>

Sh. Anubhav Sharma

**R/o:** S-439, Near M Block Market, Greater  
Kailash-I, Defence Colony, New Delhi-  
110048

**Complainant**

**Versus**

M/s Landmark Apartments Private Limited  
**Regd. Office at:** Landmark House, plot no.  
65, sector-44, Gurugram, Haryana-122003

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)

**Complainant**

Sh. Amarjeet Kumar (Advocate)

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made there under or to the allottee as per the agreement to sale executed inter se.

### A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Landmark Corporate Centre"
2.	Location of the project	Sector-67, Gurugram, Haryana.
3.	Nature of the project	Cyber Park
4.	RERA registered/not registered	Registered Vide registered no. 61 of 2019 Dated-25.11.2019
5.	Area of the project	4.48125 acres
6.	DTCP license and validity	License no. 97 of 2008 dated 12.05.2008 valid up to 11.05.2020
7.	Unit no.	Suit no. 42 non-PLC (As per page no. 26 of the complaint)
8.	Unit area	135 sq. ft. (As per page no. 26 of the complaint)
9.	Application form	23.01.2010 (As per page no. 20 of the complaint)
10.	Allotment letter	17.03.2010 (As per page no. 26 of the complaint)
11.	Buyer's agreement	Not executed
12.	Possession clause as per application form	<b>Clause 10</b> <i>That the possession of area shall be offered by the Company to the Intending Allottee(s) within 36 months from the date of signing of the Agreement to Sell subject to Force Majeure circumstances and</i>

		<p>upon registration of Sale Deed provided all amounts due and payable by the intending Allottee(s) as provided herein and as per Agreement to sell have been paid to the Company. It is, However, understood between the Parties that various Blocks comprised in the Landmark Corporate Centre shall be ready and completed in phases and handed over to the allottee(s) accordingly. The Company shall be entitled to reasonable extension in delivery of possession of the Space to the allottee(s) in the event of any default or negligence attributable to the Allottee(s) fulfillment of Terms and Conditions of this allotment.</p> <p><b>[Emphasis supplied]</b>                  (As per page no. 23 of the complaint)</p>
13.	Due date of possession	17.03.2013 (Note: Due date to be calculated 36 months from the date of allotment i.e., 17.03.2010)
14.	Basic sales consideration	Rs.13,47,624/- (Earlier) Rs.19,86,500/- (Revised)
15.	Total amount paid by the complainant	Rs.12,11,679/- (As per statement of account at R1 to the reply of the complainant to the dismissal application of the respondent)
16.	Offer of possession for fit-out	08.06.2015 (As per page no. 44 of the complaint)
17.	Letter sent by the complainant to respondent seeking change in unit	18.07.2018 (As per annexure A-1 of application of dismissal of complaint)
18.	Occupation certificate	26.12.2018 (As per annexure A-2 of application)



		of dismissal of complaint)
19.	Memorandum of understanding (Note: unit area increased from 135 sq. ft. to 199 sq. ft. on 1 <sup>st</sup> floor)	28.03.2019 (Not executed) (As per page no. 45 of the complaint)
20.	Allotment of new unit	28.03.2019 (As per annexure-A-3 of application of dismissal of complaint)
21.	Demand notice against new unit	20.02.2020 (As per annexure A-4 of application of dismissal of complaint)
22.	Surrender request via legal notice	09.11.2021 (As per page no. 87 of the complaint)

### B. Facts of the complaint:

3. That the complainant has made following submissions:

- I. That the complainant is a law-abiding citizen of India and presently residing at S-439, Near M Block Market, Greater Kailash-I, Defence Colony, New Delhi.
- II. That the complainant vide an application for provisional allotment had booked a suit in January 2010 in the project "Landmark Corporate Centre" at Sector 67, Gurugram of the respondent/promoter and the complainant while making the application for allotment paid Rs.1,28,250/- as booking amount to the respondent.
- III. That in pursuance of the above, the complainant was allotted a suit bearing no.42 non PLC, admeasuring area 135 /- sq. ft. vide allotment letter dated 17.03.2010.
- IV. That the complainant submits that the total consideration to be paid towards the said suit was Rs.13,47,624/- and the complainant



has made a total payment of Rs.12,11,679/- till date which is 95% of the total amount.

- V. That the complainant paid the instalment as per demands by the respondent before due date despite that builder buyer's agreement has not been so far executed between the complainant and the respondent.
- VI. That the complainant had opted for the construction linked instalment payment plan, wherein the complainant was required to remit the instalment of the suit step by step as and when the construction proceeded. It is submitted that irrespective of the plan being a construction linked instalment payment plan, the complainant has already paid a total of Rs.12,11,679/- till date for the project of the respondent.
- VII. That from the very beginning, the respondent has had such unlawful conduct and has presented false assurances, representations, and warranties to the complainant. The complainant has already paid 95% of the value of the suit and the respondent has demanded 100% value of the suit without executing an agreement. Also, as per rules of RERA Act, a builder cannot demand more than 10% of the total consideration without executing an agreement.
- VIII. That during the year 2012, the complainant was regularly making the payments, as and when demanded by the respondent as the construction was in full swing which displayed the intention of the respondent to build the super structure as soon as possible. Moreover, it has been over 9 years since the allotment but development of the project has not completed till date. The complainant paid 95% of the total consideration and as per



payment plan remaining 5% is to be paid at the time of possession. Since the respondent had collected a hefty amount but had shown no corresponding development in the project.

- IX. That the complainant vide email dated 05.06.2015 asked for execution of builder buyer's agreement and completion date of project but the respondent failed to oblige of his responsibilities by not providing information related to completion of the said project. The sole purpose of the respondent was to grab the hard earned money of the complainant. It is pertinent to mention here that various emails have also been exchanged between the complainant and respondent.
- X. That on 08.06.2015, the complainant received an intimation of possession letter, which stated that the respondent applied for the occupation certificate and ready for fit outs and all related work. It is submitted that after receiving this letter the complainant till date has not received a final possession letter or BBA from the respondent.
- XI. That on 28.03.2019, the complainant received a draft Memorandum of Understanding (MOU) from the respondent but so far the same has not been executed between the complainant and the respondent. The respondent mentioned an arbitrary clause in the MOU that the agreement to sell shall be executed between the respondent and the complainant after completion of the entire Landmark Cyber Park. Also the respondent increases the size of the suit from 135 sq. ft. to 199 sq. ft. without taking consent of the complainant. The respondent mentioned in the MOU that the demised premises is free from all encumbrances but till date the MOU has not been executed by the respondent.

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- XII. That the respondent obtained registration certificate bearing number 61 of 2019 from the Hon'ble Authority on condition that the respondent will enter into an agreement to sell with the allottees as prescribed in the Haryana Real Estate Regulations and Development Rules, 2017 but till date the respondent has not been executed the builder buyer's agreement with the complainant. It is pertinent to mention here that the registration of the project is valid from 01.02.2011 to 26.12.2018 and the same has been expired but the project is nowhere near completion.
- XIII. That as per form A-H uploaded on RERA website, it is mentioned in the form that the revised date of completion the project was 26.12.2018, also, that the respondent has obtained OC on 26.12.2018 but till date the respondent has not offered the possession to the complainant and not given a copy of OC and possession letter. The respondent has shown mala fide and coercive conduct by providing wrong information to the Hon'ble Authority.
- XIV. That furthermore, the respondent assured, represented and warranted the complainant that the project would be completed within 36 months, now, it has been passed about 9 years, and the project is nowhere near completion. The respondent failed to update the status of the construction. On various occasions the complainant asked to refund the whole amount but the Respondents paid no heed to the same. The conduct of the respondent is violative of Section 18 of the Act of 2016.
- XV. That the respondent has substantially failed to discharge its obligation imposed on him under the Act. Till date, possession of the unit has not been made by the respondent and thus as per law



the respondent is liable to refund the whole amount paid by the complainant and pay the interest for every month of delay as per Section 18 of the Act.

- XVI. That the complainant sent a letter on 20.08.2021 seeking information about the project, amenities and facilities which are to be provided by the respondent. The complainant also requested to refund the amount along with interest @ 24% per annum. But the respondent did not bother to give reply to the said letter. Again on 09.11.2021, the complainant sent another letter to the respondent but as expected the respondent did not reply to the same.
- XVII. That the complainant aggrieved by the actions of the respondent sent various e-mails and seeks information about the completion of construction of the suit, handover the possession of the suit and execution of builder buyer's agreement. As expected, the respondent ignored the same and did not bother to respond properly.
- XVIII. That the present case is a clear exploitation of innocence and beliefs of the complainant and an act of the respondent to retain the complainant's hard-earned money in illegal manner. That the respondent has utterly failed to fulfil his obligations to deliver the possession of the suit in time which has caused mental agony, harassment and huge losses to the complainant, hence the present complaint.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

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- I. Direct the respondent to refund the entire amount paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment.
  - II. Direct the respondent to pay compensation for mental harassment and depression suffered by the complainant.
  - III. Direct the respondent to pay all legal expenses incurred by the complainant till date.
  - IV. To impose penalty on the builder on account of various defaults under Act of 2016.
5. The authority issued a notice dated 10.06.2022 of the complaint to the respondent by speed post and also on the given email address at medishare@gmail.com, [rajesh.grewal@landmarkgoc.com](mailto:rajesh.grewal@landmarkgoc.com) and [rameshag.ca@gmail.com](mailto:rameshag.ca@gmail.com). The delivery reports have been placed in the file. The counsel for the respondent put in appearance on 28.07.2022, 14.02.2023, 15.02.2024, 04.07.2024 and 05.09.2024 but did not file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent and decide the complaint on the basis of merits.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the complainant.

**D. Jurisdiction of the authority:**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

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As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**D.II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
9. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No.***

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**13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

10. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the above-mentioned matter, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainant.

**E. Findings on relief sought by the complainant:**

**E.I Direct the respondent refund the entire amount paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment.**

11. The complainant was allotted a unit no. 42 in the project of respondent “Landmark Corporate Centre” in Sector-67, Gurugram vide allotment letter dated 17.03.2010 for a basic sale consideration of Rs.13,47,624/-. Though no buyer’s agreement was executed but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.12,11,679/-. It was pleaded by complainant that on 09.11.2021 vide a legal notice he has requested the respondent to cancel the allotted unit and refund the paid-up amount but no reply was given by the respondent to the said legal notice.

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12. On 10.02.2023, the respondent has placed on record an application for dismissal of complaint stating that the application for OC of the project was made on 17.04.2015 and the offer of possession has been made on 08.06.2015. On 18.07.2018, the complainant has requested for change of the unit or allotment of a bigger unit and undertook to pay the differential amount against the change of the unit. The unit no. 42 which was originally allotted vide allotment letter dated 17.03.2010 was cancelled in view of the request letter dated 18.07.2018 made by the complainant requesting allotment of a bigger unit and the new unit bearing no. 1132 was allotted vide allotment letter dated 28.03.2019. The OC of the project has been received on 26.12.2018. A MoU dated 28.03.2019 was placed on record by the complainant which was duly signed by the complainant though it was neither signed by the respondent nor executed. Though the complainant on 08.08.2023 has denied that the unit has been changed on his request in reply to the application of the dismissal but failed to produce any supporting document. It was also mentioned by the complainant in reply to the application for dismissal that the differential amount mentioned in the calculation sheet sent by the respondent is not same as agreed earlier. Thus, the complainant did not pay the same.

13. Now when the complainant approached the Authority to seek refund of the amount paid for the originally allotted unit, it is observed that under clause 7 of the application form, the respondent-builder is entitled to forfeit the 20% of the basic sale consideration. The clause 7 is reproduced herein below:

*"That the Earnest money shall be deemed to be 20% of the basic sale consideration price of the area."*

14. That the above mentioned clause provides that the promoter is entitled to forfeit the earnest money paid for the allotment and interest

component on delayed payment (payable by the allottee for breach of an agreement and non-payment). The Authority is of the view that the drafting of the aforesaid clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee. As per the aforesaid clause the builder is entitled to forfeit 20% of the basic sale consideration and empowers to promoter to recover interest on delayed payments along with other amount of non-refundable nature. It is unjust condition that exploits the allottee and can be termed as one sided. The clause on the face of it does not give equal bargaining power to the allottee.

15. In the present case, though the offer for fit out has been made way back in 2015 but that has been made before obtaining occupation certificate, thus that offer of possession stands invalid. The occupation certificate has been obtained by the respondent on 26.12.2018 and the respondent has raised demand for payment of outstanding dues on 20.02.2020 but the complainant has surrendered the unit on 09.11.2021 instead of paying the amount due against the allotted unit. The complainant has sought cancellation of the unit after the completion of the unit and occupation certificate has been obtained. Thus, the respondent is entitled for deduction of earnest money.
16. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any

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actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and Mr. *Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. VS. M3M India Limited* decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

17. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant i.e., Rs.12,11,679/- after deducting 10% of the basic sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and

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Development) Rules, 2017, from the date of surrender i.e., 09.11.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**E.II Direct the respondent to pay compensation for mental harassment and depression suffered by the complainant.**

**E.III Direct the respondent to pay all legal expenses incurred by the complainant till date.**

18. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**E.IV To impose penalty on the respondent-builder on account of various defaults under Act of 2016.**

19. No material evidence has been placed on record w.r.t defaults of respondent-builder. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Thus, no direction to this effect.

**F. Directions of the Authority:**

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the amount i.e., **Rs.12,11,679/-** received by him from the complainant after

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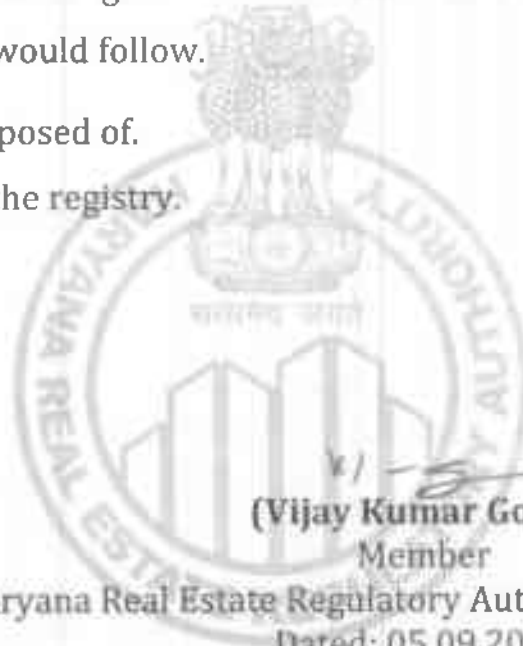


deduction of 10% of basic sale consideration of Rs.13,47,624/- as earnest money along with interest at the rate of 11.10% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 09.11.2021 till the actual date of refund of the amount.

ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to the registry.



(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2024

**HARERA**  
**GURUGRAM**